

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,) **Case No. 3:13-cr-00446-B-1**
) (Mag. No. 3:13-mj-706-BH)
Plaintiff,)
) Dallas, Texas
v.) October 30, 2013
) 2:00 p.m.
WAYNE JOSEPH SWEENEY,)
) DETENTION HEARING
Defendant.) PRELIMINARY HEARING
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RENEE HARRIS TOLIVER,
UNITED STATES MAGISTRATE JUDGE.

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1 DALLAS, TEXAS - OCTOBER 30, 2013 - 2:31 P.M.

2 THE COURT: The Court calls Case No. 3:13-mj-206-BH
3 [sic], United States of America versus Wayne Joseph Sweeney.
4 And this case is set for detention and preliminary hearing this
5 afternoon.

6 Mr. Leal, are you ready to proceed? Sorry.

7 MR. LEAL: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. LEAL: I apologize.

10 THE COURT: That's okay. And Mr. Finstrom and Mr. Day
11 have entered appearances for Mr. Sweeney since we were in court
12 last. And are you gentlemen ready to proceed?

13 MR. FINSTROM: We are, Your Honor.

14 THE COURT: Okay. Mr. Leal?

15 MR. LEAL: Your Honor, the Government calls Richard
16 Gardner.

17 (The witness is sworn.)

18 THE COURT: You may proceed, sir.

19 RICHARD GARDNER, GOVERNMENT'S WITNESS, SWORN

20 DIRECT EXAMINATION

21 BY MR. LEAL:

22 Q Agent Gardner, would you state your name for the record,
23 please?

24 A Richard Gardner.

25 Q And where do you work?

1 A In Dallas, Texas.

2 Q And what do you do in Dallas, Texas for a living?

3 A I'm a Special Agent with the Drug Enforcement
4 Administration.

5 Q And how long have you been a special agent with the Drug
6 Enforcement Administration?

7 A Nearly 17 years.

8 Q I want to turn your attention to a person by the name of
9 Wayne Joseph Sweeney. Do you see a person that you recognize
10 by that name in the courtroom here today?

11 A Yes, sir, I do.

12 Q Would you point that person out and identify that person by
13 an article of clothing that he or she is wearing, as well as
14 where that person is either sitting down or standing?

15 A It's the individual at the defense counsel table to the
16 right-hand side, in the orange attire.

17 MR. LEAL: Your Honor, may the record reflect the
18 witness has identified the Defendant?

19 THE COURT: The record will so reflect.

20 BY MR. LEAL:

21 Q Agent Gardner, in regards to Mr. Sweeney, I want to turn
22 your attention specifically to a case involving him that
23 occurred back on about September 13th in Dallas County, Texas
24 in the Northern District of Texas. Are you familiar with the
25 facts of that particular case?

1 A Yes, sir.

2 Q And would you talk to the Court or tell the Court how it
3 was that that particular case got started?

4 A The actual case started last year in late fall, an
5 investigation regarding the sales of synthetic cannabis from
6 his business location on LBJ and Jupiter Road, known as Hostile
7 Pipes.

8 Q And did the case involve a number of people?

9 A Yes, sir, it did.

10 Q Both known and unknown?

11 A Absolutely.

12 Q Does the case involve some folks out in Arizona?

13 A Yes. It involves individuals there that were manufacturing
14 synthetic cannabis as well as bath salts.

15 Q Okay. And does it also involve some folks in Indiana?

16 A Yes, sir, it also does, for manufacturers of synthetic
17 cannabis there.

18 Q And does it also involve other folks?

19 A Yes, sir.

20 Q And you're talking about synthetic cannabis. Are you
21 talking about controlled substances?

22 A Yes, sir. It is a controlled substance.

23 Q And specifically, a controlled substance analogue?

24 A Analogue in this case.

25 Q Okay. And would you tell the Court what you came to find

1 out in this particular case?

2 A Following the undercover purchases of a product known as K
3 or Knock Out from Mr. Sweeney's business location, these
4 products were tested by the DEA South Central Laboratory here
5 in Dallas and they were found to contain a product known as PB
6 22 and 5F-PB 22 in the samples purchased. And these are
7 recognized by DEA as analogues --

8 Q Okay.

9 A -- of controlled substances.

10 Q And specifically, are they Schedule I controlled
11 substances?

12 A Yes, sir, they are.

13 Q And you said that that particular substance was made
14 through an undercover purchase?

15 A Yes. Multiple purchases.

16 Q Okay. And in regards to this particular substance, would
17 you tell the Court what it was that you learned about who was
18 receiving it and how it was being distributed?

19 A Learned that Mr. Sweeney was receiving these products both
20 from -- previously from Arizona as well as from the state of
21 Indiana from manufacturers, and that he would distribute --
22 package and distribute these products from his location, a
23 store named Hostile Pipes here in Dallas, Texas.

24 Q And did you learn how he would distribute and package these
25 particular substances?

1 A Yes. He had two packages: one large, one small. And they
2 were colored blue or pink. There was no label upon them, but
3 they were referred to by the sales personnel as either KO or
4 Knock Out.

5 Q Okay. And these particular substances, were you able to
6 talk to some of the folks that worked at Mr. Sweeney's place of
7 business? I think you called it Hostile Pipes.

8 A Yes, sir.

9 Q And is that located here in the Northern District of Texas?

10 A Yes, sir, it is.

11 Q In the Dallas Division?

12 A Yes, sir, it is.

13 Q And when you talked to those folks at Mr. Sweeney's
14 business there at Hostile Pipes, what did they tell you as far
15 as how the substances arrived and how they were packaged
16 subsequently?

17 A They arrived in a bulk format, loosely. Mr. Sweeney would
18 bring those into the business. They would take it back to the
19 back area of the store, where he would have the employees
20 package the product in either pink or blue Ziploc baggies.
21 These baggies would then be counted out to approximately 100 in
22 a bag. You would have the 100 of each, place those under one
23 side of the store at the cash register, and the customers would
24 come in there and purchase them.

25 Q Okay. And did they give you a time frame as to about how

1 long this had gone on?

2 A For the employees that had been there since -- since the
3 store had opened, as far as they knew, and a couple of years.

4 Q Okay. And so I want to kind of start back at the beginning
5 for a little bit with the Arizona distribution, was that going
6 on at that point in time?

7 A Yes, sir, it was.

8 Q At some point in time -- and what was the name of that
9 Arizona distributor?

10 A That was called Greenlight Distribution.

11 Q Were you able to look at financial documents and receipts
12 that were being sent back and forth between Mr. Sweeney and
13 Greenlight Distributing?

14 A Yes, sir, we were.

15 Q And would you tell the Court what it was you found out of
16 those?

17 A Well, what we found is the documentation of the purchases
18 made by Mr. Sweeney of the products that they manufactured and
19 the payments for the transportation or shipment of those
20 products.

21 Q And what did the payments amount to? Just roughly?

22 A At a time, I believe, \$20,000, \$30,000, \$40,000 at a time.
23 He was purchasing a large quantity. This was not a small
24 amount for distribution.

25 Q Okay. At some point in time, did that Greenlight

1 Distributing company get shut down?

2 A Yes. It was the subject of another DEA investigation
3 taking place in the Phoenix area, and they were the subject of
4 a search warrant.

5 Q Okay. After that particular location was shut down, did
6 Mr. Sweeney gain a different supplier?

7 A Yes, sir, he did.

8 Q And what supplier did he gain?

9 A We believe it was WSW, located in just, uh, Indianapolis,
10 Indiana.

11 Q And what leads you to believe that?

12 A Well, through coordination with other officers from the
13 DEA, Indiana State Police and Homeland Security, they conducted
14 an investigation there and recently did a search warrant where
15 they recovered documentation regarding the customers that they
16 supplied. Additionally, when we conducted our search warrant,
17 we found documentation related to his purchases from WSW.
18 Those included checks and Federal Express shipping labels.

19 Q Okay. And from those documents that you looked at, were
20 you able to determine approximately more or less how much
21 product Mr. Sweeney was receiving on a monthly basis?

22 A He was probably -- from what we can tell, close to 80
23 pounds, 40 kilos, around there, more or less every month.

24 Q And were you able to tell how much money he was paying for
25 the product?

1 A About \$40,000 to \$60,000.

2 Q Okay. And at some point in time, did those folks -- I
3 think you mentioned Homeland Security earlier and the Indiana
4 State Police -- did the folks up in Indiana get shut down?

5 A Yes, sir. They've been taken -- there's -- they've stopped
6 production at this time.

7 Q Okay. And subsequent to that, were you able to tell
8 whether or not Mr. Sweeney was able to -- let me ask you this.
9 When did they get shut down?

10 A Approximately two weeks ago.

11 Q Okay. Have you been able to determine if Mr. Sweeney had
12 other suppliers?

13 A We believe at least one, possibly two other suppliers.

14 Q Okay. In regards to Mr. Sweeney, were you able to, in your
15 investigation, were you able to determine how much money he was
16 making?

17 A On a yearly basis?

18 Q On a yearly basis.

19 A Well in excess of \$1 million.

20 Q Okay. And have you been able to look at financial records
21 from the Hostile Pipes business and is that money basically
22 where -- has -- the money you just quoted, is that where the
23 money came from?

24 A Yes, sir. The majority of his income was generated through
25 sales of synthetic cannabis through his business, Hostile

1 Pipes.

2 Q And there's the purchase that was made on or about
3 September 13th of 2013 here in Dallas in the Northern District
4 of Texas. Did -- and that's what was tested and came back
5 positive as an analogue controlled substance?

6 A Yes, sir, as well as the subsequent purchase I believe the
7 27th of September.

8 Q Okay. Of this year?

9 A Yes, sir. And the results were the same.

10 Q Okay. And then was there a purchase in March of 2013 as
11 well?

12 A Yes, sir, there was.

13 Q And has that been tested?

14 A It's been sent to the lab. We have not received a result
15 for that.

16 Q Okay. In regards to Mr. Sweeney, did you learn whether or
17 not he had any assets outside of the country?

18 A Yes, sir, we did.

19 Q And will you tell the Court what type of assets he has
20 outside the country?

21 A He has real property, consists of at least one home, if not
22 a home and a condominium, in Cancun, Mexico. He also has at
23 least one bank account in Mexico.

24 Q Okay. And how were you able to find this information?

25 A We learned this through the issuance of grand jury

1 subpoenas.

2 Q Okay. And in regards to the bank account that you're
3 talking about, have you been able to look to see how much money
4 has been deposited into that bank account over the course of
5 time?

6 A From our forensic accounting, we believe at least \$3.2
7 million.

8 Q And at some point in time, did Mr. Sweeney get arrested?

9 A Yes, sir.

10 Q And when he got arrested, did -- was anything found in his
11 possession that would indicate another link to this particular
12 account?

13 A Yes, sir.

14 Q And would you tell the Court what that was?

15 A On I believe the 16th of this month, he was stopped by the
16 Department of Public Safety Highway Patrol in Hopkins County,
17 and at that time he was found to be in a large -- in possession
18 of a large amount of currency.

19 Q Okay.

20 A He also had a money counter with him.

21 Q Okay. Do you know about how much money he had with him?

22 A I believe it was \$297,000. Something like that. Just shy
23 of \$300,000.

24 Q All right. And you said he had a money counter with him?

25 A Yes, sir.

1 Q Did you ever at any point in time find any bank cards in
2 reference to that account in Mexico?

3 A Yes, sir. He had an HSBC ATM-style card, and he also had
4 an HSBC credit card.

5 Q And are those cards in his name?

6 A Yes, sir.

7 Q And you also mentioned the property that he had in Mexico,
8 and you said it was -- it was two houses or --

9 A We believe at least two, two types of real property.

10 Q Okay. In looking at Mr. Sweeney, in looking at his travel
11 habits, were you able to determine if he spends time in the
12 United States and Mexico as well?

13 A He spends a large amount of time in Mexico.

14 Q And would you tell the Court how you were able to find that
15 out?

16 A We documented that through the course of our investigation
17 with Homeland Security, HSI, and Immigration Control. We also
18 documented that through the grand jury subpoenas and contacts
19 with the airline industry. We also documented that through the
20 interviews of numerous employees as well as acquaintances.

21 Q And in regards to Mr. Sweeney, did you also find travel
22 documents that supported that?

23 A Yes, sir, we did.

24 Q And would you tell the Court what type of travel documents
25 you found that supported that?

1 A We found a United States passport with frequent entries and
2 exits from the United States into and out of Mexico. We also
3 found a Mexican temporary resident card, as well as another
4 travel document. These were all co-located with his passport.

5 Q In regards to Mr. Sweeney, were you ever able, through the
6 course of your investigation, were you ever able to make a
7 determination as to where his residence was?

8 A His true residence?

9 Q Yes.

10 A He -- both he and acquaintances freely admit that he
11 resides in Mexico. In regards to his true residence in the
12 United States, we are unsure at this time.

13 Q And why is that?

14 A Well, he has listed the business as his residence, but when
15 we conducted the search warrant at the business location, we
16 found no living quarters there: a bed, shower facilities,
17 things of that matter that would indicate that someone was
18 actually living there.

19 Q Okay.

20 A We do know about a renting of a hotel room, but minimal
21 personal goods were found there to indicate someone was
22 actually living there long-time.

23 Q In regards to real property in the United States, does --
24 are there any residences listed for Mr. Sweeney?

25 A Not in his name.

1 Q And what do you mean by that?

2 A He has recently purchased two pieces of real property. One
3 of those is a residential home in the county just north of here
4 in Collin County or Denton County, Texas. The other is I
5 believe in Carrollton in Dallas County.

6 Q Okay.

7 A Both of those are listed in his girlfriend's name.

8 Q All right. And in regards to those particular pieces of
9 property, did y'all through the course of this investigation,
10 did y'all ever go out and try and ascertain if he was living at
11 either one of those locations?

12 A Yes, sir, we did.

13 Q And would you tell the Court what it was that you found?

14 A At the Carrollton property, it's a building being
15 rehabilitated right now. So it's unlivable. In regards to the
16 property in the county, we spoke with his girlfriend and
17 learned that he doesn't stay at that location. He has been
18 there once to look at it and that is that.

19 Q Okay. And the property in The Colony, how was that
20 purchased?

21 A It was purchased with a cashier's check for \$173,000.

22 Q Let me ask you this. At some point in time, a search
23 warrant was executed at Hostile Pipes; is that right?

24 A Yes, sir.

25 Q And was that on or about October 16th of 2013?

1 A Yes, sir.

2 Q Would you tell the Court what was found whenever you all
3 executed that particular search warrant?

4 A We found, I believe, just in excess of two kilograms of
5 synthetic cannabis and approximately seven kilograms of
6 suspected synthetic cathinones or bath salts as well as a large
7 amount of currency and what we would consider drug ledgers and
8 financial documents.

9 Q Okay. You said you found synthetic cathinones, which are
10 also bath salts. Are those also controlled substances?

11 A Yes, sir, they are.

12 Q Are they analogue controlled substances?

13 A Yes, sir.

14 Q In regards to the drug ledgers and financial instruments,
15 did that go in line with the investigation that you conducted?

16 A Yes, sir, it is.

17 Q And then at some point in time were you also able to talk
18 to some of the folks that worked there?

19 A Yes, sir, we did.

20 Q And did they tell you how long they'd been selling the
21 product?

22 A In excess of two years.

23 Q And while you were there, were there also people even then
24 lining up to try and purchase some?

25 A Yes. From the time the store opened, they have a regular

1 -- visits of clients. They're in there a very short time, just
2 to make the purchases. And the ones walking up that spoke with
3 us said that they were there to purchase KO or Knock Out.

4 Q And did you ask any of the employees whether or not they
5 knew what kind of effect this had on their customers?

6 A Yes, sir, we did.

7 Q And what did they tell you?

8 A The employees who we spoke with who said they had never
9 used the product themselves reported that the customers had
10 said that it was a very good product, it provided a great buzz,
11 and one of them said -- one of the customers had said, you
12 probably shouldn't use it, though, because there's some severe
13 withdrawal symptoms.

14 Q In regards to Mr. Sweeney, you talked about how he had been
15 pulled over I think in Hopkins County; is that right?

16 A Yes, sir.

17 Q At some point in time, were his phones searched after he
18 was arrested?

19 A Yes, sir.

20 Q And did -- was anything found on those phones?

21 A Yes, sir, there was.

22 Q And would you tell the Court what was found?

23 A We found some pictures of cashier's checks and FedEx
24 shipping labels to WSW, the manufacturer of synthetic cannabis
25 in Indiana. We also found a picture, looks like it was taken

1 on a table, with very large cannabis or marijuana buds placed
2 upon it. We also found a picture of himself smoking what
3 appeared to be some type of marijuana or synthetic cannabis
4 cigarette or joint.

5 Q Okay. Were you all able to find any voice recordings or
6 voicemails or anything like that?

7 A Yes, sir, we did.

8 Q And would you tell the Court what you found?

9 A We found what we believe to be the recordings of push-to-
10 talk conversations from his side of the phone to individuals in
11 Mexico.

12 Q And --

13 A This was detailing transfers of money.

14 Q Okay. And were you ever able to find anything talking
15 about sending more good stuff down?

16 A Yes, sir, we did.

17 Q And would you tell the Court what the nature of that
18 conversation was?

19 A That appeared to -- there was conversation regarding the
20 quality of product, improving the taste or flavor because
21 customers were complaining. And then other conversations on a
22 different time and place -- or different date where it seemed
23 to be that he was -- the product was selling well and that he
24 wanted more of it.

25 MR. LEAL: Pass the witness, Your Honor.

1 THE COURT: Whichever one of you gentlemen is going to
2 cross-examine.

3 MR. FINSTROM: I will, Your Honor. May it please the
4 Court?

5 THE COURT: Yes, sir. Go right ahead.

6 CROSS-EXAMINATION

7 BY MR. FINSTROM:

8 Q Officer Gardner, how much of your work involves
9 investigating head shops?

10 A At this time, sir?

11 Q Yeah.

12 A The majority of it.

13 Q And you're an experienced officer when it comes to how head
14 shops operate; is that correct?

15 A No, sir.

16 Q Would it be fair to say that it's your experience that a
17 lot of the reason we have head shops is for people to try to
18 sell analogue substances to mimic illegal substances to avoid
19 the drug laws?

20 A I don't know exactly. I would say this, that I've noticed
21 recently, at least within the last year to 18 months, a
22 proliferation of head shops, smoke shop type businesses, that
23 seem to be thriving because of the sales of synthetic cannabis.

24 Q And when you executed the search warrant on this head shop,
25 there were a substantial number of analogue-type substances you

1 did not seize; is that correct?

2 A That -- I believe we seized all of the synthetic cannabis
3 that we found there as well as the synthetic cathinones. I
4 don't --

5 Q Maybe I'm not asking it correctly, but there were various
6 other products that are similar type head shop products that
7 you did not seize; is that correct?

8 A We didn't seize any of the pipes that I believe -- or the
9 smoking paraphernalia regarding that.

10 Q Now, there was an entire glass case of various other
11 substances that were for sale that were not seized by you;
12 isn't that correct?

13 A Are you referring to the electronic cigarette products?

14 Q And others.

15 A I know there was also cigarettes and pipe or loose tobacco.
16 We didn't seize that, either.

17 Q But there's a whole line of analogue-type substances that
18 are sold in head shops; is that correct?

19 A There may be. I'm trying to recall the inside of that
20 location. If you can tell me perhaps where, I might be
21 familiar with that. I do recall that there, you know, there
22 was the synthetic cannabis that was seized from below the cash
23 register area. There was also the loose synthetic cannabis
24 that was near his office in the back, as well as the packaged
25 synthetic cathinones that were back over near the office area.

1 But I'm not exactly sure where you're speaking about.

2 Q I've never been there so I -- my understanding is the way
3 it was described to me is that there were sale -- glass sales
4 counters, and in the counters where you could observe them
5 there were a lot of substances for sale, one of which was this
6 cannabis that you determined was illegal. And you're saying
7 that's incorrect?

8 A No. I'm not saying that's incorrect. I'm trying to think
9 about the products other than the loose tobacco, the
10 cigarettes, those type of products, as well as the electronic
11 cigarette products that weren't seized. And then there were
12 other items like pipes and rolling papers and head shop
13 paraphernalia like posters or decals or koozies. But I don't
14 remember anything else that might have been an analogue that
15 wasn't seized.

16 Q Okay. Now, when was this particular analogue made illegal?

17 A When was it made illegal?

18 Q Yeah, this particular -- this cannabis analogue that you
19 seized in --

20 A I believe -- I believe it falls under the Drug Control Act
21 as an analogue, and I believe it's 1986 was the analogue
22 statute.

23 Q But it's my understanding that the way the statute works is
24 that the head shops try to buy new and different products that
25 fall outside the statute and then the statute is amended to

1 include those products to make them illegal. Is that an unfair
2 thing to say?

3 A Yes, sir, I think it would be. I believe, you know, that
4 the qualifications are the similar synthetic -- the similar
5 chemical structure, the purported or the mimicking of the --
6 how do I want to describe it -- the effects of the product, as
7 well as the intention of the sale of them.

8 Q Now, there were zanny bars in there that were for sale that
9 were not seized by the Government; is that correct?

10 THE COURT: What was that word you said?

11 MR. FINSTROM: Zanny. Z-A-N-N-Y.

12 THE WITNESS: That may be. I don't recall ever seeing
13 those products.

14 BY MR. FINSTROM:

15 Q Are you familiar with it?

16 A No, sir, I'm not.

17 Q And that's an analogue -- so you're not aware if it's an
18 analogue substance that's similar to Xanax?

19 A It may be. I have never seen that product or even heard of
20 that product until now.

21 Q Kratom capsules. K-R-A-T-O-M. Did you see any of those in
22 there?

23 A I did not see any of those.

24 Q Kratom liquid. Same spelling. Did you see any of that in
25 there?

1 A No, sir, I did not.

2 Q Speedies?

3 A I didn't see those.

4 Q Are you familiar with any of those?

5 A I've heard of the kratom products before in a different
6 investigation.

7 Q Are they illegal?

8 A I don't know.

9 Q Okay. Now, as a part of your investigation, you determined
10 when these undercover sales were made that they were rung up on
11 the cash register; is that correct?

12 A I believe they were.

13 Q And there are business records reflecting the purchase of
14 the bulk products which was sold?

15 A We did find records.

16 Q Okay. And are you aware of his tax records, that he
17 reported over a million dollars in taxes last year?

18 A I have not personally seen them, but I know he had
19 mentioned those.

20 Q Okay. And in reviewing his financial records in the store,
21 there was a recent \$150,000 tax payment to the IRS. Did you
22 see that payment?

23 A I did not personally see that, sir.

24 Q Are you familiar with that? Did other people --

25 A I've heard that mentioned.

1 Q By the Government or by Wayne?

2 A By Mr. Sweeney.

3 Q Okay. You haven't heard anybody in the Government say that
4 he had just made a \$150,000 tax payment?

5 A No, sir, I did not.

6 Q He's asserted to you that he believed at the time he sold
7 this stuff it was legal; is that correct?

8 A Yes, sir.

9 Q I think at the time of the seizure there were various
10 chemists' information which comes along with the wholesale
11 purchases, where there's representations from the manufacturer
12 about the legality of the product. Is that correct?

13 A Depending on the product and the laboratory reports that
14 are provided. Some of them make that claim.

15 Q And there were claims regarding this product, that this
16 product was legal; is that correct?

17 A I had examined one of the laboratory reports. I don't
18 remember if it exactly said that, sir.

19 Q The money that was seized when he was arrested, he told
20 y'all what he was using the money for; is that correct?

21 A He didn't tell me, but I believe he told the Department of
22 Public Safety officers.

23 Q And he told them that he was on his way to make a -- buy a
24 -- make a down payment on a ranch; is that correct?

25 A Either a down payment or a final payment.

1 Q So he was purchasing real estate with money; is that
2 correct?

3 A That's what I understand. Yes, sir.

4 Q Now, Wayne has listed that shop as his residence for a
5 fairly lengthy period of time; is that correct?

6 A I believe for a period of time. Yes, sir.

7 Q And it was listed as his residence when he was on parole
8 from his last criminal offense; is that correct or are you
9 aware?

10 A I believe it was.

11 Q And he was visited there by his parole officer and the
12 parole officer determined at that time it actually was his
13 residence, didn't he?

14 A I don't know. I never spoke with the parole officer.

15 Q Are you aware that the City of Dallas kicked him out of
16 there, wouldn't allow him to live there, and that's when he
17 moved to the hotel across the street?

18 A No, sir. I didn't know that.

19 Q The one house that he purchased, he purchased a house for
20 his girlfriend that he had a child with; is that correct?

21 A That's what I understand.

22 Q And she's repaying him for the money that he purchased the
23 house; is that correct?

24 A She's made one payment.

25 Q One payment? She just -- he just bought the house?

1 A According to the lady, yes.

2 Q The second house is in the process of being remodeled; is
3 that correct?

4 A That's what I understand.

5 Q What was the name of the customer that had withdrawal
6 symptoms?

7 A I don't know. The sales clerk didn't tell me that.

8 Q What steps has the DEA taken to make head shops aware that
9 this particular synthetic cannabis is illegal?

10 MR. LEAL: Objection. Relevance.

11 THE COURT: Sustained.

12 BY MR. FINSTROM:

13 Q Are you aware of anything that's been done by the
14 Government to post -- put Wayne Sweeney on notice that the sale
15 of this substance was illegal?

16 MR. LEAL: Objection. Relevance.

17 THE COURT: Overruled.

18 THE WITNESS: Has the Government made any -- could you
19 say that again so I understand, sir?

20 BY MR. FINSTROM:

21 Q Are you aware of any attempt the Government has made to put
22 Wayne Sweeney on notice that the sale of this synthetic
23 analogue is illegal?

24 A I don't believe the Government has personally informed Mr.
25 Sweeney prior to this time that it was illegal.

1 Q Are you aware of them making any other head shop aware of
2 it?

3 A Any other head shops?

4 Q Yeah.

5 A Yes, sir.

6 Q What steps do they take?

7 A They stop selling the product.

8 Q And is there any indication you have that you had made
9 Wayne aware of the fact that this was illegal, that he would
10 not have stopped selling the product?

11 A Well, what I meant by letting them know, they -- it was
12 subsequent to a search warrant and arrest that we performed at
13 those locations.

14 Q Say that one more time. I lost you in the middle of it.

15 A We notified them when we conducted search warrants and
16 arrest warrants of the owners and operators of those locations.

17 Q And when was that?

18 A Mostly this year.

19 Q And you told them that this substance was illegal?

20 A Yes, sir.

21 Q You personally?

22 A Face-to-face.

23 Q Okay. Now, and you've seized substantial business records,
24 both showing the sale and the purchase of these various
25 analogue substances; is that correct?

1 A Yes, sir.

2 MR. FINSTROM: I don't believe we have any further
3 questions, Your Honor.

4 MR. LEAL: Just very quickly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. LEAL:

7 Q When Greenlight Distributing was shut down, were they
8 selling the same type of product that the company from Indiana
9 is selling? Basically?

10 A Yes, sir.

11 Q Synthetic cannabis?

12 A Yes, sir.

13 Q How much money was Mr. Sweeney sending the folks out in
14 Arizona, Greenlight Distributing?

15 A Hundreds of thousands of dollars overall.

16 Q Okay. And when that got shut down, did he switch to
17 another distributor?

18 A Yes, sir.

19 Q Did -- how much money was he sending to that distributor?

20 A Tens of thousands of dollars.

21 Q Okay.

22 MR. LEAL: Pass the witness.

23 MR. FINSTROM: We have no further questions, Your
24 Honor.

25 THE COURT: Thank you, sir.

1 (The witness steps down.)

2 THE COURT: Mr. Leal?

3 MR. LEAL: Your Honor, the Government asks the Court
4 to take judicial notice of the Pretrial Services report. The
5 Government rests.

6 MR. FINSTROM: Your Honor, if I can address the
7 Pretrial Services report, and then I have a couple of
8 witnesses.

9 THE COURT: Okay. Do you want to save that for
10 argument or --

11 MR. FINSTROM: Well, it's kind of -- there is an
12 allegation in the presentence report that Wayne is a sex
13 offender.

14 THE COURT: Who did not register. Yes, I read that.

15 MR. FINSTROM: And Carl represented him on one
16 registration case. Carl and I represented him on the second
17 registration case. Both of those -- or, one was no-billed, one
18 was dismissed. He was convicted in '68 in Wisconsin for
19 consensual underage sex, and at the time of that conviction
20 there was no sex registration statute in Wisconsin.

21 THE COURT: Did you say in '68?

22 MR. DAY: '89.

23 MR. FINSTROM: I'm not looking at it.

24 MR. DAY: Or '81.

25 MR. FINSTROM: '89. I'm sorry.

1 THE DEFENDANT: '81.

2 MR. DAY: '81.

3 MR. FINSTROM: '81. And at the time he was convicted
4 -- that's what it is. He was convicted in '81. The sex
5 registration statute was not passed until a later date. The
6 Wisconsin sex registration statute has a 15-year cap on it.
7 So, 15 years after the conviction, there's no further
8 registration requirement. At this time in state of Texas, that
9 statute is not listed on the SORA list with the Department of
10 Public Safety, and there's a threshold before there's a
11 registration requirement that the offense be listed as a
12 similar offense to a state -- a Texas state offense before
13 there is a requirement to register. And we've been in active
14 contention over whether the fact Wayne Sweeney is required to
15 register. And it's my belief that at this time there is no
16 requirement in the state of Texas that he register. We have
17 two pending expunctions on the arrests for the failure to
18 register. We're beginning litigation with DPS in Austin to
19 remove him from the sex offender list because he's not listed
20 on the SORA list as a reportable offense.

21 And I think there has been a finding by Judge Snipes in the
22 last dismissal -- and I don't have it with me but I
23 participated in preparing it; it was signed by Judge Snipes --
24 where he made a finding which was substantially similar to
25 that, that there is no requirement that he register in the

1 state of Texas. Despite that, he remains on the registration
2 list, but he's been here and actively contested any legal
3 requirements he has, and I think, given the opportunity, he
4 would stay here and continue to contest them. If he was found
5 to be required to register, I believe he would register and
6 comply with the requirements.

7 The fugitive case that's referred to, he was at a trade
8 show in Las Vegas, and the fugitive case without disposition
9 was just a means for arresting him in Las Vegas and returning
10 him to Texas. So that never resulted in any criminal charges.
11 And we'd just ask the Court to consider that, and then we have
12 -- we would call Sherry Thomas.

13 (The witness is sworn.)

14 THE COURT: Sir, would you mind questioning him from
15 the podium?

16 MR. FINSTROM: I'm sorry.

17 THE COURT: Her? Questioning her from the podium,
18 please? Thank you.

19 MR. FINSTROM: I was talking and forgot to get back
20 up, Your Honor.

21 THE COURT: Okay.

22 SHERRY THOMAS, DEFENDANT'S WITNESS, SWORN

23 DIRECT EXAMINATION

24 BY MR. FINSTROM:

25 Q Okay. Tell the judge your name.

1 A Sherry Thomas.

2 Q And how long have you known Wayne Sweeney?

3 A Fifteen years.

4 Q Now, you're described in the presentence report-- in the
5 Pretrial Services report as being his girlfriend. Is that
6 correct?

7 A Yes.

8 Q That's how they described me.

9 THE COURT: Hopefully she doesn't know what it says in
10 the Pretrial Services report --

11 MR. FINSTROM: Okay. They --

12 THE COURT: -- since she's not supposed to see that.

13 MR. FINSTROM: I think --

14 BY MR. FINSTROM:

15 Q You don't consider yourself his girlfriend but you did have
16 a child with him; is that correct?

17 A Yes.

18 Q And you were called by a Pretrial Services officer and you
19 tried to contact them to provide information about Wayne but
20 you were unable to get them; is that correct?

21 A Is that Jesse Garza?

22 Q Excuse me?

23 A Is that the Jesse Garza?

24 Q Yeah.

25 A Yes.

1 Q Now, how long have you known Wayne?

2 A Fifteen years.

3 Q And where does he reside?

4 A In Cancun.

5 Q And he also, when he's in Texas, where does he reside?

6 A In the hotel.

7 Q And is the hotel right across the street from his place of
8 business?

9 A I believe so.

10 Q And he stays there regularly when he's in the United
11 States?

12 A Yes.

13 Q Now, he purchased a house for you; is that correct?

14 A Yes.

15 Q And you've made an agreement to make repayment for the
16 purchase of the house?

17 A Yes.

18 Q And when did that occur?

19 A In August.

20 Q And does he care for your child?

21 A Yes. Let me correct that. He didn't purchase the house
22 for me. He purchased it for our daughter.

23 Q For your daughter? And he regularly provides support for
24 the daughter; is that correct?

25 A Yes.

1 Q And he provides any support you request for the care of the
2 child?

3 A Yes.

4 Q How are you employed?

5 A I'm a teacher.

6 Q And where do you teach?

7 A In Dallas.

8 Q And how long have you been a teacher?

9 A Thirteen years.

10 Q And do you depend on Wayne for those child support
11 payments?

12 A Yes.

13 Q Do you believe, if the Court considered releasing him on
14 bond, that he would stay in the United States and face charges?

15 A Yes.

16 Q Now, are you aware that when this last case was pending in
17 state court that he regularly made trips back and forth to
18 Mexico but when he was required to be in court in the United
19 States he immediately came up here and appeared?

20 A Yes.

21 Q Are you aware of that?

22 A Yes.

23 Q And you're aware on short notice that he would get a
24 flight, come up here, and appear in court; is that correct?

25 A Yes.

1 Q How much of the month is he working operating his business
2 at the head shop?

3 A I don't know.

4 Q You don't know? But it is an actively-run business? Do
5 you know how many employees there are there?

6 A No.

7 Q It's not a place you've been?

8 A I've been there a couple of times in the past year, --

9 Q Okay.

10 A -- couple years, maybe. I think there's four or five, but
11 I'm not positive.

12 Q Okay.

13 MR. FINSTROM: We have no further questions, Your
14 Honor.

15 CROSS-EXAMINATION

16 BY MR. LEAL:

17 Q Ms. Thomas, what's the address on that house in Cancun?

18 A I don't know.

19 Q Where else does he stay?

20 A At the hotel. Here.

21 Q Okay. But you don't know the address of the house in
22 Cancun?

23 A I don't know the address.

24 Q Does he go anywhere else in Mexico?

25 A Not that I know of.

1 Q Who has access to his Mexican bank account?

2 A I don't know.

3 Q Do you have access to his Mexican bank account?

4 A No.

5 Q Do you know how much money is in that Mexican bank account?

6 A No.

7 Q You said that he bought the house you're living in for his
8 daughter?

9 A Yes.

10 Q And when did he buy that house?

11 A In August.

12 Q Of this year?

13 A Yes.

14 Q And you said you're supposed to pay him back?

15 A Uh-huh. Yes.

16 Q And how many payments have you made to him?

17 A One.

18 Q When was that?

19 A In October. The first payment.

20 Q And how much was that?

21 A \$1,000.

22 Q Is the house in your name?

23 A Yes.

24 MR. LEAL: May I have just a moment, Your Honor?

25 (Pause.)

1 BY MR. LEAL:

2 Q Do you own another residence or is there another residence,
3 one that's being remodeled or --

4 A Yes. It's not in Carrollton, though. It's in Richardson.

5 Q Okay. And who owns that house?

6 A It's in my name, but it's Wayne's.

7 Q It's in your name but it's his?

8 A Uh-huh.

9 Q I'm sorry. You've got to answer yes or no.

10 A Yes.

11 Q When did he buy that?

12 A I don't remember. May? I don't remember.

13 Q May of this year or last year?

14 A I don't remember for sure. But maybe a year ago, maybe a
15 little bit less.

16 Q Okay. Is that house paid for?

17 A I believe so.

18 Q And how much did that house cost?

19 A I don't know. I don't -- I don't remember.

20 Q Okay. But --

21 A I've never been there.

22 Q It's in your name --

23 A Yes.

24 Q -- but you've never been there?

25 A Yes.

1 Q So you don't really own it?

2 A You asked me whose it was; I said it was his.

3 Q Right. And I'm just making sure you --

4 A Right.

5 Q -- you don't really own it?

6 A No.

7 Q But it's in your name?

8 A Yes.

9 Q Why would Mr. Sweeney do that?

10 A When they were ready to close, he was in Cancun and the
11 house is very convenient to where I work and I could sign the
12 papers easily.

13 Q It's being remodeled?

14 A Yes.

15 Q Who's paying for the remodeling?

16 A I'm assuming he is.

17 Q I mean, you're not, right?

18 A No.

19 Q Okay.

20 A No.

21 Q Is it three-bedroom, two-bath?

22 A I have no idea.

23 Q Okay. Anything else that's in your name that actually
24 belongs to Mr. Sweeney besides those two properties?

25 A I don't think so. No.

1 MR. LEAL: Pass the witness, Your Honor.

2 MR. FINSTROM: We have no further questions, Your
3 Honor.

4 THE COURT: Ma'am, you may step down. Thank you.

5 (The witness steps down.)

6 MR. FINSTROM: We would call Vindu Chauhan, Your
7 Honor.

8 (The witness is sworn.)

9 VINDU CHAUHAN, DEFENDANT'S WITNESS, SWORN

10 DIRECT EXAMINATION

11 BY MR. FINSTROM:

12 Q Now, tell the judge your name.

13 A Vindu.

14 Q And how are you employed?

15 THE COURT: Could you stop just a second, sir? Would
16 you spell your name, please?

17 THE WITNESS: V-I-N-D-U. Vindu.

18 THE COURT: And is that your complete name?

19 THE WITNESS: No. My last name is Chauhan. C-H-A-U-
20 H-A-N.

21 THE COURT: Say your last name.

22 THE WITNESS: C-H-A-U-H-A-N.

23 THE COURT: H-A-N? I'm sorry about that.

24 MR. FINSTROM: I'm sorry. I butchered it, so there
25 you go.

1 THE COURT: Well, we've got the electronic recording
2 going. If we have to make a record, I want to make sure that
3 the court reporter can get that.

4 BY MR. FINSTROM:

5 Q How are you employed?

6 A I work as a like responsible person.

7 Q And you work for Wayne; is that correct?

8 A Yes.

9 Q And how long have you worked for him?

10 A I start work 2008 (indecipherable), and couple months later
11 I quit, then I come back, then again I quit and I come back and
12 I -- this year I came back in March, after March 19.

13 Q Okay.

14 A And last year I start September.

15 Q Total, how long in the period you've been here?

16 A Probably two and a half years.

17 Q Okay. And what duties do you have in your employment?

18 A What?

19 Q What do you do for Wayne?

20 A Oh, I do in the store everything, like taking care, and I
21 am cosigner in his account.

22 Q Okay. Now, a substantial part of the store's business is
23 selling these analogue substances to people who want to use
24 them; is that correct?

25 A Yes, sir. But I don't have any idea about that part of

1 because I never smoke in my life.

2 Q Okay. And I'm not saying that you used them, but that's
3 part of the reason for the store, is to sell them. Is that
4 correct?

5 A Yes.

6 Q How many different kinds of products like that are sold in
7 the store?

8 A My knowledge, only one kind.

9 Q There isn't other products that are for sale?

10 A No.

11 Q When you say one kind, what are you describing?

12 A That's like Knock Out.

13 Q And --

14 A And other, other item for the smoking, like water pipes,
15 hand pipes, cigarettes, topical.

16 Q And when I asked the officer about the zanny bars and
17 kratom and speedies, those are not sold in the store?

18 A Yeah, we sell in the store.

19 Q And were those seized by the police when they came and --

20 A No.

21 Q -- executed their warrant?

22 A No.

23 Q And are they still for sale in the store now?

24 A Yes, sir.

25 Q Okay. Now, have you ever had any discussions with Wayne

1 about selling the Knock Out?

2 A No.

3 Q Was it your understanding that it was legal?

4 A Yes, sir.

5 Q Would you have sold it if it was illegal?

6 A I don't know. Because -- because it's legal, that's why

7 Mr. Sweeney sell it. That's what I know.

8 Q Yeah. And he believed it was legal; you believed it was
9 legal?

10 A Yes, sir.

11 Q You've stopped selling it now; is that correct?

12 A Since the -- we have the operation, the search warrant, I
13 never been there to the store.

14 Q Okay. Now, at the time when you were in the store and
15 purchases were being made, were they rung up on the cash
16 register?

17 A Yes.

18 Q Was there a record made of the purchases?

19 A End of the day, we have report.

20 Q And they chronicled all the purchases that had been made in
21 the store for that day. Is that true?

22 A Yes.

23 Q And it included all the Knock Out purchases that were made?
24 What was done with that report?

25 A It's in the store. I just write it down, what we have, and

1 that's all.

2 Q And it's my understanding that that went to a bookkeeper;
3 is that correct?

4 A Yes.

5 Q Okay.

6 A It goes to bookkeeper and Mr. -- CPA. Eric (phonetic).

7 Q Did you have authority to write checks for Wayne?

8 A Yes, sir.

9 Q How often did you write checks for Wayne?

10 A When we have like supply comes, I go to buy cigarettes on
11 -- from supply com, water pipes, hand pipes, that kind of
12 stuff. I -- if I have to write a check. Otherwise, we have to
13 buy money order sometime. That's what it is.

14 Q And there is a record made of those purchases; --

15 A Yes, sir.

16 Q -- is that correct?

17 A Yes.

18 Q And that's turned over to the bookkeeper?

19 A Yes, sir.

20 Q How many employees are there in the store?

21 A Oh, five. With me, we are five.

22 Q And is it your understanding that the store is still open,
23 or is it closed?

24 A Yeah. It's still open.

25 Q Okay.

1 MR. FINSTROM: We have no further questions, Your
2 Honor.

3 CROSS-EXAMINATION

4 BY MR. LEAL:

5 Q Ma'am, you said that you had worked for Mr. Sweeney I guess
6 starting back in 2011?

7 A Yeah.

8 Q Okay. And then you said you quit?

9 A Means you know like sometime I got upset with something and
10 I go, but it's not from pressure from Mr. Sweeney. But I quit
11 and I go to another job. But he trust me a lot, because I work
12 hard.

13 Q Okay. All right. What'd you get upset about?

14 A You know, sometime you know like something I don't do and
15 he blames to me. That's why I say, I don't want to do that. I
16 -- that's all it is. It's not a pressure or nothing at all.

17 Q I'm not asking that. I'm just asking what was it that
18 upset you that made you quit?

19 A Like another employee does something wrong and comes to me
20 and I'm real kind of, you know, very sensitive person.

21 Q Okay.

22 A That's all it is.

23 Q All right. So you worked, you quit, came back, then you
24 quit again?

25 A And come back.

1 Q Right. And the second time you quit, was it -- why was
2 that?

3 A Probably last year, 4/20 of April. For April 20.

4 THE COURT: What kind of training did you say?

5 THE WITNESS: 2012.

6 THE COURT: What kind of training?

7 THE WITNESS: No, no, no. I quit last year.

8 THE COURT: You quit?

9 BY MR. LEAL:

10 Q Right. You quit, but why did you quit?

11 A Oh, one -- oh, one guy, he's trying to talk to Mr. Sweeney,
12 this lady, she's showing your business to sell someone your
13 business. I say, I don't do that, and why like I -- I don't
14 try to sell his business to someone Indian people. That's
15 somebody give him wrong information. And so I said, if you
16 don't trust me, I don't want to work. I just walk out on the
17 store. That's what it is.

18 Q Okay. So you left Mr. Sweeney because of that?

19 A Yeah.

20 Q Okay. And then you came back?

21 A And I start working at Sam's and then I came back. Yes,
22 sir.

23 Q All right. There is -- you said that there is a drug,
24 Knock Out, being sold there?

25 A Yes, sir.

1 Q The synthetic cannabis? Okay. And where did you all have
2 that for sale?

3 A Under register.

4 Q I'm sorry. On the register or under the register?

5 A Under register. Right here.

6 Q Okay. Could you see it?

7 A Yeah.

8 Q Okay. Could people that come in see it, that it was for
9 sale?

10 A Just regular customer. I start work before that, this item
11 is sold, selling.

12 Q Okay. But let me ask you this, though. I go into the
13 store, Hostile Pipes.

14 A No, you cannot see.

15 Q Okay. So I couldn't see it? Okay. And you're shaking
16 your head.

17 A No.

18 Q Okay. So if I came into the store, I wouldn't know it was
19 there if I had never been there before and had never bought it
20 before?

21 A Yeah, customer ask. It is only we have regular customer.

22 Q Okay. How much money was being made from this Knock Out
23 drug?

24 A I have no idea, but it's like regular sale. It's like
25 monthly -- I can say, yearly, no more than \$1.2 or .3 million

1 yearly.

2 Q Okay. \$1.2 --

3 A Or .3 million.

4 Q -- or \$.3 million yearly?

5 A Uh-huh. Because all that goes -- goes to CPA. We don't
6 see the full report.

7 Q Right. And you said uh-huh. Was that a yes?

8 A Yes.

9 Q Okay. All right. So all this money is being made from
10 this drug that's being sold from under the counter that nobody
11 can see? In other words, you have to know it's there --

12 A Uh-huh.

13 Q -- in order to buy it?

14 A Uh-huh.

15 Q Okay. Let me ask you this. I mean, that's a lot of money,
16 right?

17 A It's not for one day's sales, sir.

18 Q Right. For a year.

19 A Uh-huh.

20 Q That's a lot of money, right?

21 A Yes, sir.

22 Q Okay. So, if you're making that much money, wouldn't it
23 make sense to you that, if you know it's okay, that you just
24 put it out in the open for the whole world to see, so that way
25 maybe you could make twice the money or three times the money?

1 Maybe you could make \$10 million a year.

2 A Sir, I am just an employee.

3 Q Right.

4 A Regular employee. I got paid like you will get paid.

5 Q Yes, ma'am. Yes, ma'am. As a regular person, --

6 A Uh-huh.

7 Q -- okay, just a regular person, if you're making \$1 million
8 to \$3 million a year off of something that's hidden, and let's
9 just say you're a regular person, wouldn't you want to make
10 more money?

11 A I don't want it.

12 Q Yeah, but wouldn't you want to make more money?

13 A Me?

14 Q Yeah.

15 A No. I don't want to make more money. I don't understand
16 your point. I really -- I am not seeming all discussions that
17 way.

18 Q That's fine, ma'am.

19 MR. LEAL: May I have just one second, Your Honor?

20 (Pause.)

21 MR. LEAL: Pass the witness.

22 REDIRECT EXAMINATION

23 BY MR. FINSTROM:

24 Q Now, ma'am, everything that's sold in the store is locked
25 up and controlled by the employees. Is that correct?

1 A Yes. Always.

2 Q And so that it's not possible for somebody to just come in
3 the store --

4 A No.

5 Q -- and pick up any of the items and take them to the
6 counter?

7 A Everything is locked up.

8 Q Okay. And I think on one -- at least one of the occasions
9 when you left employment, you returned to your home in India.
10 Is that correct?

11 A Yes.

12 Q Did you do that on more than one occasion?

13 A One time, one time my brother was sick, but it's like it
14 was -- this year, I was India for four and a half months.

15 Q Okay.

16 MR. FINSTROM: We have no further questions, Your
17 Honor.

18 RECROSS-EXAMINATION

19 BY MR. LEAL:

20 Q Do you sell pipes there?

21 A Yes.

22 Q If I walk in the door, can I see the pipes?

23 A Of course.

24 MR. LEAL: Pass the witness.

25 THE WITNESS: But it's locked. Nobody can touch it.

1 MR. LEAL: Right. Pass the witness.

2 MR. FINSTROM: My final witness is --

3 THE COURT: Ma'am, you may step down.

4 MR. FINSTROM: I'm done, Your Honor.

5 (The witness steps down.)

6 MR. FINSTROM: Ryan Burnight.

7 (The witness is sworn.)

8 RYAN BURNIGHT, DEFENDANT'S WITNESS, SWORN

9 DIRECT EXAMINATION

10 BY MR. FINSTROM:

11 Q Tell the judge your name.

12 A Ryan Burnight.

13 Q And can you spell your last name for me?

14 A B-U-R-N-I-G-H-T.

15 Q Okay. And how do you know Mr. Sweeney?

16 A I have worked for him for roughly nine months, and I was a
17 customer before then for about I want to say maybe two years.

18 Q Okay. Now, are you familiar with the operation of the head
19 shop?

20 A I am.

21 Q And you're employed there now?

22 A I am.

23 Q Now, does he sell a number of analogue-type products in the
24 store?

25 A I would -- yes.

1 Q And the reason people buy those products is to avoid using
2 illegal drugs; is that correct?

3 A Correct.

4 Q And that's why there's a market for them?

5 A Right.

6 Q Okay. Did you believe at the time you were selling this
7 Knock Out stuff that it was legal?

8 A It was, to my understanding, it was 100 percent legal.

9 Q And you were selling it believing it was legal?

10 A Correct.

11 Q And were all purchases that were made in the store, were
12 they chronicled with a business record, with a receipt in the
13 register and a report for the accountant?

14 A Yes, sir.

15 Q And what were your duties at the store?

16 A I was a daily employee, managing the store, taking care of
17 customers, making sure all of the items that were for sale were
18 in stock and looked good, and, you know, daily cleaning and
19 stuff like that.

20 Q Okay.

21 MR. FINSTROM: We have no further questions, Your
22 Honor.

23 CROSS-EXAMINATION

24 BY MR. LEAL:

25 Q I'm sorry. Is it Mr. Barnight?

1 A Burnight.

2 Q Burnight? Mr. Burnight, where do you keep that Knock Out?

3 A It is kept easily accessible behind the counter.

4 Q Okay. Behind the counter or under the counter?

5 A Technically, both.

6 Q Okay. Is it where everybody can see it?

7 A No, but there are various signs posted all over the store
8 labeled -- advertising for a medical marijuana alternative.

9 Q Okay. And does it say, buy your Knock Out here?

10 A No, but --

11 Q All right.

12 A -- it does lead people to walk in and refer to the sign and
13 ask about the product that we do have. When they ask about it,
14 I then show them.

15 Q So, if I walk in the door, it's not like I know it's there?
16 If I'm the first guy -- if it's my first time in the store, I
17 don't know that product is there?

18 A You should immediately see the signs.

19 Q I should immediately know Knock Out is there?

20 A That some sort of alternative is there, yes.

21 Q Okay. But that's not my question.

22 A Knock Out --

23 Q The question --

24 A -- specifically? No.

25 Q Okay. And that's how it's sold, right, is Knock Out?

1 A Uh-huh.

2 Q You've got to answer yes or no.

3 A Yes, sir.

4 Q And who told you it was legal?

5 A Mr. Sweeney.

6 Q Do you know how much money he was making on a monthly basis
7 off of this?

8 A I did not. I did not have access to financial records.

9 Q Okay. Did you work there every day?

10 A Six days a week, yes.

11 Q What were your hours?

12 A From 6:00 to 2:00.

13 Q 6:00 to 2:00?

14 A Uh-huh.

15 Q You've got to answer yes or no.

16 A Yes, sir.

17 Q All right. Is that 6:00 in the evening to 2:00 in the
18 morning?

19 A Yes, sir.

20 Q In regards to your hours, how much of your sales during the
21 hours that you worked there came from Knock Out?

22 A I would say probably 65-70 percent of it.

23 Q 65 to 70 percent? (Pause.) What were the other sales?

24 A The other sales were from tobacco products, hand pipes,
25 water pipes, rolling papers, all the other merchandise that's

1 at the store.

2 Q How often did you see Mr. Sweeney there?

3 A Um, off and on. I would say he spent about 40 percent of
4 his time there while I was employed there. There was a good
5 stint of time where he was taking care of business outside the
6 country.

7 Q Where --

8 A But --

9 Q And where was that?

10 A Mexico, as far as I knew.

11 Q How much time would you say he spent in Mexico?

12 A I'd probably say about two-three months in a given time.

13 Q Okay. Is that he goes there for two or three months and
14 comes back here for a week and then goes back for two or three
15 months, or --

16 A It's --

17 Q -- how does that work?

18 A It wasn't really on a scheduled basis. I would say he'd be
19 gone two months, back for two-three weeks, gone again, back
20 again.

21 Q Okay. So, and when you say gone again, is he gone again
22 for two more months and then comes back?

23 A (no audible response)

24 Q I'm sorry?

25 A Yes.

1 Q Okay. And each of those times, do you know where he's
2 going in Mexico?

3 A I'm assuming to his residence in Cancun.

4 Q Okay. Do you know what the address is of that residence?

5 A I have absolutely no idea.

6 Q Did you ever have to make any deposits into any accounts?

7 A No, sir.

8 Q Who did that?

9 A I am assuming Vindu.

10 Q Okay. When Mr. Sweeney came into town, where did he stay?

11 A He stayed at the Regency Hotel across the way once the fire
12 marshal told him to kick -- get out of his office back in the
13 back area of the store.

14 Q Did he have a bed back there?

15 A He did.

16 Q Is there a shower in that place?

17 A There is not, but he has quite a well-equipped sink.

18 Q Okay. So he's coming back for two or three weeks at a time
19 when you're --

20 A No, he still had -- he's had that room at the Regency for a
21 very extended period of time.

22 Q Okay. Did he have a bed there at the shop?

23 A He had a cot. And a couch.

24 Q Did you help package the product, --

25 A I didn't.

1 Q -- Knock Out?

2 A I did not.

3 Q Your job was just sell it?

4 A Yes. I was a sales employee.

5 Q Okay. Did you have -- did you advertise it or did people
6 just come up and ask for it?

7 A Well, I mean, people would ask about the medical marijuana
8 alternative signs and I would explain to them that that was
9 referring to the Knock Out. And it used to be on display in a
10 case and then that case got moved and things got rearranged in
11 the store and it never got re-put on display.

12 Q It used to be put on -- it used to be on display?

13 A Yes. These to be a bag on display inside of the Zippo case
14 advertising that that bag was there.

15 Q Okay. When did it stop being displayed?

16 A Um, --

17 Q About, if you can remember.

18 A It happened before I was an employee there.

19 Q Do you know if that was about the time that Greenlight
20 Distributing in Arizona got shut down?

21 A I have absolutely no information on (indecipherable) stuff.

22 Q Okay. Do you know anything about Greenlight Distributing?

23 A To my knowledge, Greenlight is a company that makes glass
24 pipes.

25 Q Did the register ever fill up?

1 A I'm sorry?

2 Q Did the register ever fill up with cash? Did you have to
3 remove the cash?

4 A Yeah. We had drops every now and then. Most businesses
5 do.

6 Q Okay. And who had access to the drop safe?

7 A Vindu and I believe Janet.

8 Q And who's Janet?

9 A Janet is one of -- another one of our employees.

10 Q Okay. Who else had access to that drop safe?

11 A Nobody that I'm aware of.

12 Q Did Mr. Sweeney have access to it?

13 A I would assume so.

14 MR. LEAL: Pass the witness.

15 REDIRECT EXAMINATION

16 BY MR. FINSTROM:

17 Q Now, sir, how big is that store?

18 A It's fairly large. It technically takes up four suites in
19 that complex. Square footage wise, I wouldn't even really be
20 able to give you a ballpark.

21 Q But it's a great big store; is that correct?

22 A Yes. And we --

23 Q And there's a lot of products in the store?

24 A There is a lot of products. We do advertise it as the
25 largest shop in Texas.

1 Q Okay. And at one point they sold salvia; is that correct?

2 A Correct.

3 Q And you sold salvia?

4 A That was prior to my employment there, but I did know -- I
5 was a customer at that point in time.

6 Q Okay. And salvia became illegal and they quit selling it;
7 is that correct?

8 A Correct.

9 Q Okay.

10 MR. FINSTROM: We have no further questions, Your
11 Honor.

12 MR. LEAL: Nothing further, Your Honor.

13 THE COURT: You may step down. Thank you.

14 (The witness steps down.)

15 MR. FINSTROM: We would rest, Your Honor.

16 THE COURT: Okay.

17 MR. LEAL: The Government closes.

18 MR. FINSTROM: Close, Your Honor.

19 THE COURT: Okay.

20 MR. FINSTROM: Thank you.

21 THE COURT: Does either party wish to argue?

22 MR. LEAL: Yes, just very briefly. The Government
23 asks that the Court find probable cause and additionally the
24 Government would ask that the Court detain the Defendant. He's
25 got a residence in Mexico. He's got access to an account that

1 there's been approximately \$3 million deposited to. He's
2 facing time in federal prison. And certainly, based upon his
3 criminal history, the Government would argue that the Defendant
4 should be detained based on the facts and circumstances before
5 the Court.

6 THE COURT: Let me ask you a question. I notice that
7 the complaint says that this is a 240 -- I mean, sorry, an
8 841(b) case. (b). 841(b) case. 841(b)(1)(C) case. Wait a
9 minute. Let me look at it again.

10 MR. LEAL: Judge, that was in the body, in the body of
11 the affidavit, says --

12 THE COURT: (b)(1)(B). I'm sorry. Go ahead.

13 MR. LEAL: And that should be (b)(1)(C), Your Honor.

14 THE COURT: (b)(1)(C)?

15 MR. LEAL: Yes, Your Honor.

16 THE COURT: And -- but I notice that you did not check
17 that it's a presumption case. Is it a presumption case?

18 MR. LEAL: It's a zero to 20 range, Your Honor, --

19 THE COURT: Okay.

20 MR. LEAL: -- is my understanding. So I would, yeah,
21 I would argue that, yes, it is a presumption case, Your Honor.

22 THE COURT: Okay. I just didn't understand it because
23 it seemed inconsistent, so --

24 MR. LEAL: Yes, Your Honor.

25 THE COURT: -- I just wanted to clarify where we

1 stand.

2 MR. FINSTROM: Your Honor, in the prior case whenever
3 he was requested to be in court he was in court. He was facing
4 25 to life. Really, a more serious case punishment-wise than
5 this one. There were times where he was notified in Mexico the
6 day before to appear, and he got on an emergency flight and
7 appeared in court the following morning. And at no point
8 during my representation of him has he ever made any attempt to
9 avoid responsibility or avoid going to court.

10 I think that the Court certainly has the power to request
11 his passport, limit him to North Texas, so he can operate a
12 business.

13 Officer Gardner's testimony about analogue substances and
14 my understanding of analogue substances is substantially
15 different. I mean, it's a crazy business, but my perception is
16 that the head shops sell that stuff because it's their
17 perception that they can avoid, you know, the drug laws and
18 that they sell it believing it's legal, and customers buy it to
19 avoid the drug laws, thinking that it's legal. And no one
20 who's not a chemist would be able to determine whether this
21 stuff was legal or not. You've heard that there's no attempt
22 to tell Sweeney that it was illegal to sell the stuff, and I
23 think he certainly has stopped on that. And the record that
24 the final witness said about salvia, when he was told quit
25 selling it, he quit selling it.

1 And I think he's a good bond risk. He can operate a
2 business. He can be in North Texas during the pendency of the
3 case. I don't believe he'll avoid responsibility or going to
4 court, coming to court, and I'd ask the Court to consider bond.

5 THE COURT: All right. Think you, gentlemen. And I
6 appreciate the case that you've presented here on behalf of
7 your client, Mr. Finstrom.

8 I disagree with you about the -- how the evidence appears
9 to me, and I guess I'm finding fact here regarding Mr.
10 Sweeney's knowledge. You know, I'm sitting here, and of course
11 I hear cases that involve methamphetamine and cocaine and
12 marijuana that's not analogue, and something that is consistent
13 with drug traffickers when they traffic in those substances is,
14 first of all, that it's not open. It's not open in the
15 situation here, based on the evidence I heard, is that although
16 the Knock Out was 65 to 70 percent of the sales, it was kept
17 hidden in behind the counter or was kept out of sight and
18 locked up.

19 That's really inconsistent in my view with believing that
20 it's okay. Inconsistent in my view with believing that it's
21 okay is having to change suppliers because one supplier is shut
22 down and then having to change suppliers again because another
23 supplier is shut down by law enforcement. Inconsistent in my
24 opinion with that also is the fact that you're purchasing
25 property or whatever else using large sums of cash rather than,

1 as people who are engaged in legitimate businesses do, checks
2 and maintaining a checking account and paying for things that
3 way. And having to use cash and having to use money orders and
4 having to carry big sums of cash and money counters is
5 inconsistent with believing it's a legitimate business in my
6 view. Purchasing real property and putting it into the names
7 of third parties is consistent with what methamphetamine,
8 cocaine, marijuana, heroin and other drug traffickers do.

9 In this case, I do find probable cause to believe that the
10 offense alleged -- that Mr. Sweeney committed the offense
11 alleged in the criminal complaint, which as you know gives rise
12 to a presumption under the law that there is no condition or
13 combination of conditions I could impose which would reasonably
14 assure his appearance as required.

15 Now, I will tell you that but for the fact that Mr. Sweeney
16 has a long and extensive criminal history, and but for the fact
17 that he has no stable residence in this case, and that
18 basically his business, for all practical purposes, doesn't
19 exist the way his business existed here, and the fact that he
20 has strong ties, including real estate, a home, what he
21 considers a home, as well as financial resources in Mexico,
22 lead me to believe that the Government, even though you've
23 presented evidence to rebut that presumption, the Government
24 has carried its burden by a preponderance of the evidence to
25 establish that there are no conditions or combination of

1 conditions I could impose which would reasonably assure Mr.
2 Sweeney's appearance as required in this case. And so that's
3 going to be my finding.

4 And I understand perfectly what you're saying about the
5 analogue, you know, and the substance and when and if it's
6 illegal. Just based on what I have before me, I do have to
7 find probable cause. You know what that standard is. And of
8 course, down the road when it's appropriate you will have the
9 opportunity, of course, to challenge whether or not there is
10 actually an offense that's been committed in this case. But I
11 have to go with the charge that I have as well as the evidence
12 that's presented to me. And for that reason, I'm going to
13 order that Mr. Sweeney be detained in this case.

14 Is there anything else, then, we need to do in this case
15 this afternoon?

16 MR. LEAL: Nothing from the Government, Your Honor.

17 MR. FINSTROM: No, Your Honor.

18 THE COURT: Then we are adjourned, gentlemen.

19 (Proceedings concluded at 3:44 p.m.)

20 --oOo--

21 CERTIFICATE

22 I certify that the foregoing is a correct transcript from
23 the digital sound recording of the proceedings in the above-
entitled matter.

24

25

Kathy Rehling, CET**D-444
Certified Electronic Court Transcriber

Date

1	INDEX	
2	PROCEEDINGS	3
3	WITNESSES	
4	Government's Witnesses	
5	Richard Gardner	
6	- Direct Examination by Mr. Leal	3
7	- Cross-Examination by Mr. Finstrom	19
8	- Redirect Examination by Mr. Leal	28
9	Defendant's Witnesses	
10	Sherry Thomas	
11	- Direct Examination by Mr. Finstrom	31
12	- Cross-Examination by Mr. Leal	35
13	Vindu Chauhan	
14	- Direct Examination by Mr. Finstrom	39
15	- Cross-Examination by Mr. Leal	44
16	- Redirect Examination by Mr. Finstrom	48
17	- Recross-Examination by Mr. Leal	49
18	Ryan Burnight	
19	- Direct Examination by Mr. Finstrom	50
20	- Cross-Examination by Mr. Leal	51
21	- Redirect Examination by Mr. Finstrom	57
22	EXHIBITS	
23	-none-	
24	RULINGS	
25	Findings	61
	Probable Cause Found	62
	Defendant Ordered Detained	63
	END OF PROCEEDINGS	63
	INDEX	64